More Truck Lines, Inc. *and* General Truck Drivers, Office, Food & Warehouse Union, Teamsters Local 952, International Brotherhood of Teamsters, AFL–CIO, Petitioner and the Brotherhood, Intervenor. Cases 31–CA–23883 and 31–RC–7554

October 1, 2001

DECISION, ORDER, AND DIRECTION OF ELECTION

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On June 19, 2000, Administrative Law Judge Frederick C. Herzog issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, in which the Teamsters joined, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, and to adopt the recommended Order, as modified.[1]

1. The judge found that the Respondent violated Section 8(a)(1) of the Act by informing employees in May 1999 that, if the Teamsters became the certified representative of the employees, then an existing collective-bargaining agreement between the Respondent and the Brotherhood (the Brotherhood Agreement) would be "null and void," thereby "freezing" employees' wage levels and denying them certain annual wage increases contained in that agreement.[2] The Respondent asserts that, under *RCA Del Caribe, Inc.,* 262 NLRB 963 (1982), its statement that employees' wages would not, and could not, be raised in accordance with the terms of the Brotherhood Agreement in the event of the Teamsters' certification was simply a correct recitation of applicable Board law.

In *RCA Del Caribe*, the Board held that an employer did not violate Section 8(a)(1) and (2) of the Act by negotiating and executing a successor collective-bargaining agreement with an incumbent union after learning of the filing of a representation petition by an intervening union. 262 NLRB at 966. The Board indicated that the fate of the employer-incumbent successor agreement would be determined by the outcome of any postexecution election:

> If the incumbent prevails in the election held, any contract executed with the incumbent will be valid and binding. If the challenging union prevails, however, any contract executed with the incumbent will be null and void.

262 NLRB at 966. Based on the phrase "null and void," the Respondent asserts that, if the Teamsters had been certified as the employees' collective-bargaining representative, it would have been as if the Brotherhood Agreement never existed. In that event, argues the Respondent, any future obligations contained in the Brotherhood Agreement, including the implementation of the annual wage increases, would be extinguished as well. Indeed, the Respondent contends that any attempt to grant the wage increases would have constituted unlawful unilateral action on its part. Thus, concludes the Respondent, it lawfully told its employees they would not, and could not, receive the promised wage increases if the Teamsters' certification came to pass. We disagree.

It is settled law that when employees are represented by a labor organization their employer may not make unilateral changes in their terms and conditions of employment, such as their wages. See *NLRB v. Katz*, 369 U.S. 736, 747 (1962). This duty to maintain the status quo imposes an obligation upon the employer not only to maintain what he has already given his employees, but also to "implement benefits which have become conditions of employment by virtue of prior commitment or practice." *Alpha Cellulose Corp.,* 265 NLRB 177, 178 fn. 1 (1982), enfd. mem. 718 F.2d 1088 (4th Cir. 1983). Accord: *Illiana Transit Warehouse Corp.,* 323 NLRB 111 (1997) (employer unlawfully told employees "wages and benefits would be frozen at current levels for the period of negotiation" and unlawfully withheld annual wage increases for this reason). As the judge explained, once promised, future nondiscretionary wage increases are such existing terms and conditions of employment. See *Liberty Telephone & Communications,* 204 NLRB 317, 318 (1973) (a promised wage raise that induces employees to accept or continue their employment is an "established" condition of employment); cf. *McDonnell Douglas Aerospace Services Co.*, 326 NLRB 1391 fn. 2 (1998).

Applying these principles to the instant case, we find that the Respondent's reading of *RCA Del Caribe* goes too far. Thus, contrary to the Respondent's contention, the phrase "null and void" in *RCA Del Caribe* cannot be read literally to mean that an employer may treat the terms and conditions of employment established under an agreement with a defeated incumbent union as if they never existed. To do so would allow, or arguably compel, an employer to reset employees' then existing conditions of employment to those that were in effect prior to the final employer-

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] Article III, sec. 1.A., of the Brotherhood Agreement provided generally that each regular fulltime driver employed on the effective date of the Agreement would receive $1 per-hour-wage increases on his first three anniversary dates.

incumbent agreement. In agreement with the judge, we are convinced that the Board in *RCA Del Caribe* only intended the phrase "null and void" to mean that a successful intervening union must be afforded an opportunity to negotiate a new contract, rather than be saddled with the one entered into by the defeated incumbent. Thus, if a challenging union is certified, then the *contract* between the employer and the incumbent becomes void, but, as usual, the employer must abide by the then existing terms and conditions of employment until such time as it reaches an agreement with the new union or a lawful impasse occurs. See *NLRB v. Katz,* supra; *R.E.C. Corp.,* 296 NLRB 1293 (1989).

Notably, the Respondent seems to accept this reading of *RCA Del Caribe* insofar as it concerns employees' wage levels in effect at the time a challenging union is certified, as the Respondent emphasizes it is not arguing that such wage levels lawfully could be ignored. The Respondent, though, seeks to distinguish the future, bargained for wage increases detailed in the Brotherhood Agreement. According to the Respondent, there is no basis for converting such "contractually mandated" wage raises into "conditions of employment which continue to exist after the contract becomes null and void." But, for reasons explained, no "conversion" is necessary.

Moreover, contrary to the Respondent's suggestion, it is of no moment that the promised wage increases were "solely the result of the give and take and compromise of the collective bargaining process." The same could be said of the employees' current wage levels, or their health benefits, or their vacation allotment. The question is whether the actual conferral of the annual $1 per hour wage increases, whether unilaterally promised or collectively bargained, was "a reasonable expectancy of the employment relationship." See *Liberty Telephone*, 204 NLRB at 318. We find that this question must be answered affirmatively.

Accordingly, we agree with the judge that the Respondent's threat to "freeze" employees' wage levels and deny them their annual increases if the Teamsters were certified violated Section 8(a)(1) of the Act.

Contrary to the Respondent's contention, our decision here is not inconsistent with *Air La Carte,* 284 NLRB 471 (1987), in which the Board overruled objections to a representation election. In *Air La Carte*, an incumbent union told employees that, if they "voted in" a challenging union or went nonunion, they would lose their current contract and, during the interim period of no contract, the employees "could" lose health benefits, seniority rights, and suffer a reduction in pay. 284 NLRB at 473. The Board found that these statements "could not constitute threats by [the incumbent union], for it had no control over what action [the employer] might take if [the incumbent union] lost the election." 284 NLRB at 474. To be sure, the Board in *Air La Carte* commented that the incumbent union's statement that employees would lose their contract was accurate:

> [h]ad [the incumbent union] not prevailed in the representation election, its *contract* with [the employer] would have become null and void. *RCA Del Caribe*, supra at 966. Therefore, [the] statement that the employees would lose their [existing] *contract* if [the incumbent] did not win the election was an accurate one. (emphasis added).

284 NLRB at 473–474. However, as indicated, the Board in this passage referred only to the incumbent union's statement that employees would lose their contract. Contrary to the Respondent's suggestion, the Board did not hold that the incumbent union's statements about the loss of existing terms and conditions of employment accurately reflected Board law. "[A]t most," the Board said, they "constituted misrepresentations." 284 NLRB at 474.

The Respondent's reliance on *Mantrose-Haeuser Co.,* 306 NLRB 377 (1992), is misplaced, as well. In *Mantrose-Haeuser*, the employer's statement that wages "typically remain frozen" during negotiations referred only to the employer's intention to adhere to its established wage program, *including* its practice of granting certain predetermined wage increases. In contrast, the Respondent expressly threatened to withhold predetermined wage raises, giving its statement that wages would be "frozen" a totally different meaning.

Finally, the Respondent's expressed concern that implementing the annual, nondiscretionary wage increases would have constituted unlawful unilateral action on its part is unfounded. As explained above, established law dictates that the Respondent could have, and should have, implemented those predetermined increases. See *Alpha Cellulose Corp.,* supra.

2. The judge also concluded, on the basis of the Teamsters' Objection 1, that the Respondent's unlawful threat to withhold employees' scheduled wage increases was objectionable conduct that warranted setting aside the May 20, 1999 runoff election. On its face, Objection 1 alleged that the Respondent "misrepresented the law by informing employees that they would not be paid scheduled wage increases if they voted for the Teamsters." The Teamsters' Objection 4, on the other hand, alleged that, "[p]rior to the election, the Employer communicated threats of economic reprisal, intimidation, retaliation and coercion to . . . employees who supported the Teamsters over the Brotherhood." At the hearing, the Teamsters moved to withdraw Objection 4 to the extent it concerned threats of discharge and physical violence. When asked by the judge what remained of Objection 4, counsel for the Teamsters made

clear that the portion of Objection 4 that was coextensive with Objection 1, i.e., "the Employer communicated threats of economic reprisal," remained for decision. At the judge's prompting, counsel for the Teamsters agreed that this portion of Objection 4 could be covered by Objection 1. The judge then expressed his understanding that Objection 1 was "coincident with the allegations in the Complaint." Neither counsel for the General Counsel nor counsel for the Respondent objected.

In these circumstances, we find it appropriate to treat Objection 1 as including an allegation that the Respondent threatened employees' with the loss of the annual wage increases if they selected representation by the Teamsters. On that basis alone, we affirm the judge's conclusion that the Respondent engaged in objectionable conduct that warranted setting aside the May 20, 1999 runoff election.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified below, and orders that the Respondent, More Truck Lines, Inc., Corona, California, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Add the recommended paragraph after paragraph 2(b):

"IT IS FURTHER ORDERED that the runoff election conducted in Case 31–RC–7554 on May 20, 1999, be set aside, and that a new runoff election be held at such time and under such circumstances as the Regional Director shall deem appropriate."

[Direction of Election omitted from publication.]

Anne White, Atty., for the General Counsel.
Naomi Young and *Anthony S. Brill, Attys. (Gartner & Young),* of Los Angeles, California, for the Respondent.
Florence Hollman, Atty., of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

FREDERICK C. HERZOG, Administrative Law Judge. This case was heard by me in Los Angeles, California, on March 1, 2000, and is based on a charge filed on May 6, 1999, and subsequently amended, by General Truck Drivers, Office, Food & Warehouse Union, Teamsters Local 952, International Brotherhood of Teamsters, AFL–CIO (the Union), alleging generally that More Truck Lines, Inc., (Respondent), committed certain violations of Section 8(a)(1) and of the National Labor Relations Act (the Act). On October 27, 1999, the Regional Director for Region 31 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging violations of Section 8(a)(1) of the Act. Respondent thereafter filed a timely answer to the allegations contained within the complaint, denying all wrongdoing.

Subsequently, the Regional Director issued an Order consolidating the complaint for trial with Case 31–RC–7554, and certain objections to conduct affecting the results on an election.

At the hearing, I granted the General Counsel's motion to amend the complaint in several minor respects.

All parties appeared at the hearing, and were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and file briefs. Based on the record, my consideration of the briefs filed by counsel for the General Counsel, counsel for Respondent, and counsel for the Union, and my observation of the demeanor of the witnesses, I make the following.

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the answer admits, and I find that Respondent is a California corporation, with its principal place of business located at Corona, California, with other facilities in Westminster and Irvine, California, and is engaged in the business of transporting paving materials, rock, sand, and related equipment to customers located in Southern California; and that it annually purchases and receives goods valued in excess of $50,000 at its California facilities directly from suppliers located outside the State of California.

Accordingly, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that the Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Relevant Facts

The Union filed a petition on September 25, 1997, seeking an election of all full-time and regular part-time drivers employed by Respondent at its Corona, Irvine, and Westminster, California locations (the unit). The unit was already represented by the Brotherhood, a labor organization. On December 4, 1997, a Board conducted election was held and members of the Unit had the choice of voting for the Union, the Brotherhood, or neither.

The Union won a majority of the votes. The Respondent filed timely objections and the election was subsequently set aside and a second election scheduled for April 29, 1999.

On June 18, 1998, before the second election, Respondent and the Brotherhood entered into a new collective-bargaining agreement, effective July 1, 1998, through June 30, 2001. The agreement provided specifics concerning the wages to be received by the drivers during the life of the agreement. Specifically, the agreement provided for annual, nondiscretionary, wage increases.

On April 29, 1999, the second election was held. The Union received more votes than the Brotherhood, but neither received a majority of the votes. A run-off election was then scheduled for May 20, 1999, between the Brotherhood and the Union. The Union lost that election.

During the 3-week period between the second election and the run-off election Respondent distributed and/or made available to employees within the unit three documents that contain statements at issue.

The first document states that the Union's position, if the Union wins, is that Respondent "will have to give the drivers the wage increase under The Brotherhood contract anyway until a new contract is reached with the [Union]." In the same material, Respondent implies that this is incorrect. It states that, if the Union won the election, "by law, [Respondent] can no longer give you the wage increases already bargained for in The Brotherhood contract because that contract will be null and void."[1]

The second document is a letter from Respondent and signed by Dan Sisemore, president of Respondent, and Bill Pyles, a manager of Respondent. It states that "if the [Union] wins and is certified, we by law can no longer give you the wage increases already bargained for in the Brotherhood contract because that contract will be null and void. In fact, the law would require that all wages, benefits, and working conditions be frozen until we either reached agreement with the teamsters on a contract or there is an impasse in the negotiations."

The third document is a photocopy, in its entirety, of the decision in *RCA Del Caribe, Inc*., 262 NLRB 963 (1982), which has the following passage underlined:

> "If the incumbent prevails in the election held, any contract executed with the incumbent will be valid and binding. If the challenging Union prevails, however, any contract executed with the incumbent will be null and void." Id. at 966. This case was made available to drivers in the Corona and Irvine, California facilities without any further explanatory information.

In addition to these documents, Williams Pyles, operations manager for Respondent, testified at the hearing that he told Richard Craig, an employee eligible to vote in the election, that if the Union was elected over the Brotherhood, "the Brotherhood contract would become null and void and that during the negotiations for a new agreement with the Teamsters that their wages would be frozen at that level." He clarified that the words "at that level" meant whatever pay a particular employee was receiving at the time the Union was "certified as the new bargaining agent." Pyles indicated that the conversation was instigated by Craig in response to questions Craig had over the meaning of *RCA Del Caribe*. Pyles also testified that the information in the first document was meant to mean that Respondent would "no longer give [the Unit] the scheduled wage increases" if the Union was elected as the new bargaining agent.

Pyles additionally testified that Sisemore held a meeting at which, in response to an employee question, Sisemore stated that "if the [Union] won the election and were certified as the new bargaining agent that during negotiations for new contract that wages would be frozen and the Brotherhood contract would be null and void at that time."

[1] This is a significant loss, as the Brotherhood contract gave a wage increase of $1 more per hour on a driver's anniversary date (the date a driver completed his/her probationary period) every year for 3 years, or until they reached the top pay rate, whichever occurred first.

B. Analysis and Conclusions

By informing the employees in the unit verbally and in writing that if the Union won, the Brotherhood contract would be null and void thereby "freezing" the unit member's wages and denying the unit members the stated wage increases during negotiations, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 7 of the Act in violation of Section 8(a)(1) of the Act and Section 2(6) and (7) of the Act.

Prior to *RCA Del Caribe,* employers faced with a representation election due to the filing of a valid petition from a rival union were required to withdraw from bargaining with the incumbent union in order to preserve employer neutrality. 262 NLRB at 964. *RCA Del Caribe,* changed this standard.

> [T]he mere filing of a representation petition by an outside, challenging union will no longer require or permit an employer to withdraw from bargaining or executing a contract with an incumbent union. Under this rule, an employer will not violate Section 8(a)(2) by post petition negotiations or execution of a contract with an incumbent. Id. at 965.

The Board then clarified this new procedure by stating that "[i]f the incumbent prevails in the election held, any contract executed with the incumbent will be valid and binding. If the challenging union prevails, however, any contract with the incumbent will be null and void." Id. at 966.

Respondent is relying on the above passage from *RCA Del Caribe,* as justification for informing the unit that their wages would be frozen immediately upon certification of the Union because the Brotherhood contract would be null and void, and therefore so would the scheduled wage increases. Respondent therefore further asserts that they cannot commit an unfair labor practice while relying on a past Board decision. See *Transportation Enterprises, v. NLRB*, 630 F.2d 421, 427 (5th Cir. 1980).

But the Board in *RCA Del Caribe* meant for its decision to be a means to preserve the status quo, and to decrease the advantages that one labor organization may have over another. *RCA Del Caribe,* supra, at 965. Contrary to Respondent's assertions, the law is clear that during negotiations for a new collective bargaining, the working conditions of the employees continue until impasse or until there is a new agreement. The employer can make no unilateral changes in terms and conditions of employment during the bargaining process. *NLRB v. Katz*, 369 U.S. 736 (1962). "Good faith compliance with Section 8(a)(1) of the Act demands that an employer not change any 'conditions of employment' until the employer has consulted the chosen bargaining agent and given them the opportunity to negotiate any changes." *Armstrong Cork Co. v. NLRB*, 211 F.2d 843, 847 (5th Cir. 1954) (citing *NLRB v. Crompton-Highland Mills*, 337 U.S. 217, 224 (1949); and *May Department Store Co. v. NLRB,* 326 U.S. 376, 383–385 (1945)).

Continuing the conditions of employment includes continuing promised wage increases. *McDonnell Douglas Aerospace Services Co*., 326 NLRB 1391 (1998).

As the Board held in *Liberty Telephone Co*., 204 NLRB 317 (1973),

> [L]ogic and relevant authority decree that the definition of "condition of employment" includes not only what the employer has already granted, but also what he "proposes to grant." The terms and conditions of employment in a labor contract are fixed not by rigid formulas or stipulations but by the relationship between the employer and the employees. It is the normal foreseeable expectations arising out of the relationship, including the expected weekly wage, the usual promotion policy, anticipated wage increases, customary bonuses and vacations, and other announced or expected benefits, which constitute the terms and conditions of employment.

When employees are denied promised wage increases because of their selection of the union as their bargaining representative, it is a violation of Section 8(a)(1) of the Act, as withdrawing promised wage increases is changing the conditions of employment. See *Armstrong Cork Co. v. NLRB*, 211 F.2d 843, 846 (5th Cir. 1954). Moreover "[i]ncreases in line with custom and practice . . . could not be said to be either restraint or coercion under 8(a)(1) or a refusal to bargain in good faith under 8(a)(5)." Id. at 847.

Respondent cites *Air La Carte*, 284 NLRB 471 (1987), to support the accuracy of their statements to employees. In *Air La Carte*, a union steward told fellow employees that if the incumbent union did not win, the contract with the incumbent would be null and void and the employees could lose health benefits. *Air La Carte*, however, is easily distinguishable from the present case because there the union steward indicated that these were mere possibilities if the employees voted for the challenging union or voted to have no union at all. Having no union at all would, of course, make this possibility immediately likely. In the present case, Respondent indicated that wages increases would be lost only if the challenging union won. Moreover, the choice of voting for no union at all was not available during the run-off election.

Respondent also refers to *Mantrose-Haeuser Co.*, 306 NLRB 377 (1992), where the employer informed employees that while bargaining, wages "typically remain frozen until changed." The court in *Mantrose-Haeuser* did not find an unfair labor practice in that language, however, this ruling was largely due to the use of the qualifier "typically." Id. at 377. Respondent used no such qualifiers. Furthermore, unlike Respondent, the *Mantrose-Haeuser* court defined "frozen" to mean that past practices of granting predetermined wage increases would continue during negotiations. "The Respondent's statement was that wage and benefit programs would be frozen. The statement implies only that wages and benefit programs would not change." Id. at 377. The employer in *Mantrose-Haeuser* conducted himself in a manner consisted with this view, whereas in the present case, Respondent testified to a different definition of the term "frozen;" a definition that would not allow for the scheduled wage increases to occur during negotiations.

Respondent also cites *Southwire Co*., 282 NLRB 916 (1987), which indicates that it is not an unlawful labor practice to state that if a challenging union wins, wage increases may not occur because they would have to be negotiated. However, the same case clarifies that increases in wages are allowed if the increase "was in the nature of a predetermined fixed benefit that the Respondent would be able to grant unilaterally." Id. at 919 (citing *Goodman Holding Co.*, 276 NLRB 935 (1985)). In the present case, the nature of the wage increases were already predetermined and fixed, and could have been granted unilaterally.

Therefore, while the existing contract is null and void when a new bargaining agent is chosen, it is well settled that the established conditions of employment continue during negotiations, until there is a new collective bargaining or there is an impasse. By threatening workers with the loss of wages, both verbally and in writing, Respondent predicted adverse consequences that were in its control. Thus, Respondent committed, and is committing, an unfair labor practice. See *NLRB v. Golub Corp.*, 388 F.2d 921 (2d Cir. 1967).

C. The Representation Case

Background

On September 25, 1997, the Union filed a petition in Case 31–RC–7554 seeking certification as the representative for the unit which consists of all full time and regular part-time truckdrivers employed by Respondent at its Corona, Irvine, and Westminster, California locations. A Decision and Direction of Election was issued on November 7, 1997. Under the direction of the Regional Director for Region 31, an election by secret ballot was conducted on December 4, 1997, among the employees of the Respondent in the designated bargaining unit. Parties to the election consisted of the Respondent, the Union, and the Brotherhood.

The official tally of ballots from the December 4, 1997 election revealed that the Union received the majority of votes. The Respondent filed timely objections to conduct affecting the results of the election and on March 25, 1999, the Board issued a Decision and Direction of Second Election which voided the December 4, 1997 election, and directed that a second election take place.

A second election among the same parties took place on April 29, 1999, in which no ballot choice received a majority of the votes cast. Accordingly, a runoff election occurred between the two choices receiving the largest number of votes, i.e., the Union and the Brotherhood, and was held on May 20, 1999. The official tally of ballots revealed the Brotherhood as receiving 67 of a possible 140 votes (131 votes cast) and the Union receiving 63. The Union filed timely objections to conduct affecting the results of the election. On November 8, 1999, the Regional Director for Region 31 issued his second supplemental decision on objections and direction of hearing directing that a hearing be held on the objections and that the objections be consolidated with Case 31–CA–23883 for the purpose of hearing. Of the five objections filed, only Objection 1 is at issue.[2]

[2] The Regional Director for Region 31 approved the withdrawal of Objections 2 and 3. At the hearing, the Union withdrew Objections 4 and 5.

Analytical framework

Critical period[3] conduct which creates an atmosphere rendering improbable a free choice warrants invalidating an election. See *General Shoe Corp.*, 77 NLRB 124 (1948). Such conduct need not rise to the level of an unfair labor practice. It is sufficient that the conduct create, "an atmosphere calculated to prevent a free and untrammeled choice by the employees." Id. at 127. As the Board explained, "In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees." Id.

Facts and Analysis

Objection 1

As found above, prior to the election, the employer misrepresented the law by informing employees that they would not be paid scheduled wage increases if they voted for the Teamsters [the Union]. The Employer's general misrepresentations had a significant impact upon the election.

As recognized in the second supplemental decision on objections, Objection 1 is coextensive with the unfair labor practice allegations.

Section 8(a)(1) conduct interferes with the free exercise of choice and is objectionable unless, "it is virtually impossible to conclude that the misconduct could have affected the election result" based on the number of violations, their severity, the extent of dissemination, the size of the unit, and other relevant factors. See *Gonzales Packing Co.*, 304 NLRB 805 (1991) (quoting *Clark Equipment, Co.*, 278 NLRB 498, 505 (1986)); see also *Barton Nelson, Inc.*, 318 NLRB 712 (1995).

Consistent with my conclusion regarding the unfair labor practice allegation, I find and conclude that Respondent's misrepresentation, in written and verbal form, of what they were required to do by law interfered with the conduct of a free and fair election because the conduct potentially affected all of the employees' free and untrammelled election choice.

CONCLUSIONS OF LAW

1. Respondent, More Truck Lines, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, General Truck Drivers, Office, Food & Warehouse Union, Local 952, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening employees with loss of wages and by telling them that if the Union won, the wages in the Brotherhood contract would be frozen during negotiations with the Union, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 7, Section 8(a)(1), and Section 2(6) and (7) of the Act.

4. By misrepresenting the law by informing employees that they would not be paid scheduled wage increases if the Union won the election, the Respondent prevented its employees from freely expressing their choice in the May 20, 1999 election.

Accordingly, I recommend that this election be set aside and a new election be conducted at a time and date to be determine by the Regional Director.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom.

In addition, having found that the Respondent engaged in objectionable conduct affecting the results of the election in Case 31–RC–7554, I shall recommend that the election held in that case on May 20, 1999, be set aside, that a new election be held at a time to be established in the discretion of the Regional Director, and that the Regional Director include in the notice of election the following *Lufkin Rule*[4] language:

NOTICE TO ALL VOTERS

> The election of May 20, 1999, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with the employees' free exercise of a free and reasoned choice. Therefore a new election will be held in accordance with the terms of this Notice of Election. All eligible voters should understand that the National Labor Relations Act gives them the right to cast their ballots as they see fit and protects them in the exercise of this right., free from interference by any of the parties.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended[5]

ORDER

Respondent, More Truck Lines, Inc., located in Corona, California, with facilities in Westminster and Irvine, California, its officers, agents, and successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with the loss of negotiated wage increases if they select General Truck Drivers, Office Food & Warehouse Union, Local 952 International Brotherhood of Teamsters, AFL–CIO as their collective bargaining representative.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facilities in Corona, Westminster, and Irvine, California, copies of

[3] The critical period is the time between the filing of the petition and the date of the election. *Ideal Electric Mfg. Co.*, 134 NLRB 1275 (1961).

[4] *Lufkin Rule Co.*, 147 NLRB 341 (1964).

[5] All outstanding motions inconsistent with this recommended Order are hereby denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 29, 1999.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with the loss of negotiated wage increases if they select General Truck Drivers, Office, Food & Warehouse Union, Teamsters Local 952, International Brotherhood of Teamsters, AFL–CIO as their collective bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

MORE TRUCK LINES, INC.